2:Scott G-5 (1870's-1909)1910 AP1 Burma
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leapt enormous heights in the air, jumped about and ran at random, carried with the utmost ease things which no one else could move. The abbot locked him up in a sadaik, the box in which the palm-leaf manuscripts were kept; he got out without injuring the lock in any way, sprang on to the roof of the monastery, forty feet high, and turned a somersault to the ground without hurting himself in the least. He had been a boy of very soft, easy temper, and now he became fiery and uncertain, and with his vast strength, very dangerous. He only calmed down when a monk preached the law to him. He was constantly doing marvellous things; one day he walked across the river in front of the monastery, holding a monk's ôk, or food vessel, in his hands. The depth of the water was over six fathoms, but it did not reach higher than his waist. On another occasion a tree which was being cut down fell on him. He sank into the ground and came forth quite uninjured. After some years his parents took him to Magwe in Upper Burma. There he fell into bad courses and became a dacoit. This was terrible for his family in a special way, because in native territory if they cannot catch the dacoit they seize all his friends and relations and put them in jail till they can get hold of the real culprit, and no one can lay hands on a Baw-di-tha-da. At last, however, he was restored to his right mind. A holy ascetic came across him, soothed him with the payeit gyi, and then with a rusty nail and sacred medicines, tattooed out the figure put on with such lamentable results by the Shan sayā. The quondam Baw-di-tha-da is now a staid and respected broker in the employ of one of the best-known English rice firms in Rangoon. He was fortunate; most Baw-di-tha-das have to be killed in their sleep.

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But though Baw-di-tha-das are very rare, charmed tattooing is not, and there are some fast young men who seem almost to make picture galleries of themselves with emblems and patterns all over their chests, arms, backs, and the ·lves of their legs. The colour gradually dies away until ; last nothing remains but the blue breeches. These really lo k well, and they last a man to his dying day.

The following recipes and formulæ to be repeated

2:Scott G-5 (1870's-1909)1910 AP1 Burma
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564 767 coffin or digging the grave. This occupation has therefore fallen almost exclusively into the hands of the old para-kyun, and helps to keep alive the ancient feeling. It must be allowed that the ways of the sandalās do not in any way tend to conciliate the multitude.

564 ● 681 625 Finally there were the pagwet, the letyataung, or thaing-gyaing, the constables, jailers, executioners, lictors, mostly confined to the neighbourhood of the native kingdom Mandalay. These merited all the obloquy that could be cast on them, but their position of quasi-authority made them more secretly hated than openly flouted. They were never allowed to enter a free man's house, even in the exercise of their office; nor could they go within the walls of the palace stockade, but many a citizen smarted under the blows of the lictor's thaing, when a great man came round a corner suddenly, and the letyataung saw a chance for a back-hander with his fasces; and it was far too easy a matter for a man to get into jail in Mandalay to make it a wise proceeding to rail at the pagwet. It was an unlovely custom in Upper Burma which made the executioner both constable and jailer, and condemned him to live on his wits. The natural result was that he lived on the prisoners, and extorted the last pice out of his victim with threats of violence, or actual torture. Pagwet means a circle on the cheek, and this ring on the face implied that its bearer had been condemned for a capital crime, and was respited to become executioner. Others had devices descriptive of their offence tattooed on the chest, as luthat (murderer), thukho (thief), damya (dacoit or highway robber). An execution in Mandalay was a horrid sight. The "spotted man" danced round his victim, made feints with his sword and burst into fits of wild laughter or yells, to shake the doomed man's nerves. It must be admitted that the spectators were very little better. A skilful blow which just slit the skin and drew blood met [766] with an approving shout. The pagwet, like other outcasts, was buried like carrion when he died, or perhaps was simply thrown out with the town offal.

563 775 How does all this agree with the theory of Buddhism, that there is equality for all, and that the poorest man can raise himself to sublimest heights after death? The king

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within the palace, in a long trench dug for the purpose. The eldest prince, the Mekhaya, a man nearly three times Thibaw's age, and hated for his fierce, proud demeanour, died shrieking for mercy at the hands of his own slaves, whom he had often tortured. The Thonsè mintha, equally overbearing in his manner, and a fanatical hater of the English, whom he lost no opportunity of insulting, gained in his death an esteem he had never known while living. With his last breath he hurled defiance and imprecations at the brother whom he had always despised, and prophesied a speedy and bloody end for the "runaway monk." The weakly and gentle-mannered Maingtun murmured a prayer that the hideous sin of murder might be pardoned to its instigator and perpetrators, and then resigned his neck to the club which sent him to the blissful seats of nat-dewas. The princesses were subjected to nameless horrors, and the treatment of the children recalled the days when ravaging hordes marched through the land with babes spitted on their pike staffs for standards. The poor old regent of Pegu, governor at Rangoon when the British came in 1852, had his nostrils and gullet crammed with gunpowder, and was thus blown up. But the tale of horrors is not one to enlarge upon. They were conducted by those who became the king's most trusted advisers. All the three days bands of music were playing throughout the palace, and dancers posturing to divert attention from what was going on, and to drown the cries of the victims.

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The custom of putting to death all dangerous rivals on the accession of a new king was without doubt almost a recognised thing in Burma whenever there was a new sovereign. Many Burmans defend it warmly, on the plea that it secured the peace of the country. Where there were so many of the royal blood, the appointment of one, possibly among the youngest, to the supreme power, could not but lead to discontent, breaking out into open rebellion when the slighted found themselves strong enough to feel hope of success for a rising. The accession of Mindôn was marked by no such atrocities, but he came to the throne under exceptional circumstances. His brother, the Pagān Min, was deposed because he would do nothing to make peace with the English, then threatening

2:Scott G-5 (1870's-1909)1910 AP1 Burma
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CHAPTER LV

JUDICIAL ADMINISTRATION

BUDDHIST law as it was administered in Upper Burma dates from the beginning of the now existing world. The first crime was theft; the first punishment was a scolding, speedily followed by a thrashing; and the first judge was Mahā Thamada, elected by vote of the people to be ruler over them. No doubt there were written laws then, but they have not come down to us. The written code in use was given to the world by Manu, originally a cow-herd, but afterwards a minister. He found them written in large characters on the walls of another world, to which he was transported when in an ecstasy. These laws formed the first code. There have been since compiled from them eight other codes in the kingdom of Prome and other ancient states in Burmah. The last, called Mahā Manu Thaya Shwe Myin, was drawn up on the foundation of the sixth kingdom of Ava, in the year 1137 B.E. (1775 A.D.), by Minhkaung Gyi, who, with the aid of a learned monk, went through and carefully revised all the codes. These laws in their integrity are those which governed Upper Burma and now govern the whole of Burma in so far as they regulate social relations. The codes were written in Sanskrit and Magadha, a language usually called Pali through an error. The name Pali signifies really not a *language*, but "The Canon," handed down to Buddhists, as composed by pious disciples from the teachings of Shin Gautama. The Magadha or Pali code accepted is called Manu Wunnana, from its writer and compiler, a minister of state in Ava. It is looked upon as a commentary on, or a key to, the codes, and contains the whole of the laws.

2:Scott G-5 (1870's-1909)1910 AP1 Burma
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is adjudged to have lost the case, and judgment is delivered forthwith. The winning party, for all the friends are always present, immediately cause their band to strike up, dancers perform and songs are sung, and every token of triumph is exhibited. Unfortunately, however, for any supposed efficacy of the system, substitutes are allowed, and in addition to this bribery plays as important a part almost as it did in the law-courts themselves. The man whose money went farthest won his case, whether decided according to the principles of the Dhammathat or the lottery of the ordeal.

The punishments inflicted were sometimes very cruel, and the treatment of the prisoners occasionally savage in the extreme. In criminal cases torture was frequently applied to extort confession from the accused or evidence from the witnesses. Rich men usually suffered nothing worse than a fine. For the impecunious, sentences varied from sundry stripes with a rattan, with or without imprisonment, to mutilation, perpetual slavery, and death. Except for debt, a man sentenced by the court to slavery became so with all his descendants for ever, and they were usually allotted to some pagoda, doomed to support life by begging as tadaungsa, or relegated to some other of the outcast classes. Death in Mandalay was almost invariably by decapitation, the agony of the condemned being occasionally prolonged by a fiendish executioner; the custom of throwing victims to be devoured by wild beasts, or trodden to death by wild elephants in the elephant-trap, was latterly wholly given up. In the provinces, however, other methods were very frequently adopted. North of the capital "crucifixion" was particularly common. The letwakat, or wakattaing, does not at all resemble the ordinary pictorial representation of the cross. It is more like a double ladder, consisting of three stout bamboos fixed upright in the ground, three bars lashed to them horizontally with canes, and over these again two cross-bars in the shape of a St. Andrew's cross. These punishment stakes were most frequently put up on the river-bank or on sandbanks in the stream, and were particularly common where the Shan and Kachin hills come down anywhere near the Irrawaddy. Sometimes the criminal was killed before he was lashed up, sometimes he was tied up

2:Scott G-5 (1870's-1909)1910 AP1 Burma
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first and then disembowelled with a sword-gash across the stomach, or rendered helpless by a few spear-thrusts. In either case the body was left hanging, to be picked clean by the vultures, and the bones gradually fell off. Formerly, when the mouth of the Irrawaddy was Burmese territory, a favourite method used to be to tie the convict down at the edge of the stream at low water and leave him to be drowned by the incoming tide. The fishes were often more expeditious than the vultures in devouring their prey. The favourite kind of stake for this purpose was the "stump of hell," the irregular short stem of the undeveloped trees in a mangrove swamp, looking like pinnacles or knobs rising out of the confused network of exposed roots.

But imprisonment was often worse than death. The prisons had never been cleaned out since they were made, some of them noisome underground cells, some flimsy wooden or bamboo structures open all round. The prisoners sat with their feet in the stocks perpetually, and the long bamboo which united them was occasionally triced up so far that the poor wretches only touched the ground with their shoulders. A favourite time for thus inverting them was at night. But a man who had not had enough money to satisfy the judge might often manage satisfactorily to square the jailer. If he effected that he was on the whole comfortable; he was allowed to go away in the morning, have his meals at home, and go back and deliver himself into custody at night again. But if he had no money, or no friends to pay it for him, his best course was to die at once, indeed he certainly would before long, for the only food to be had in prison was that supplied by relatives of the convicts. If no friend brought it, the jailer certainly would not supply any. It was better to be "proclaimed," to suffer maungkyaw, than to go to jail. This was a punishment almost confined to the capital, and greatly resembling the old English naval practice of flogging an offender "round the fleet." The criminal was taken to each gate of the city, to the corners of all the chief streets, and to sundry other frequented places. At each of these points his crime and sentence were read out and he was flogged. None but the strong-constitutioned could stand it, but those who survived were free men.

16:Fielding Hall G-8 (1885-1890) 1898 AP1 Burma
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685 671 196 what was justice, and what was punishment. To the Burman all these words had one set of meanings; to the Englishman they had another, a very different one. And each of them took his ideas from his religion. To all men the law here on earth is but a reflection of the heavenly law; the judge is the representative of his god. The justice of the court should be as the justice of heaven. Many nations have imagined their law to be heaven-given, to be inspired with the very breath of the Creator of the world. Other nations have derived their laws elsewhere. But this is of little account, for to the one, as to the other, the laws are a reflection of the religion.

681 671 779 196 And therefore on a man's religion depends all his views of law and justice, his understanding of the word 'punishment,' his idea of how sin should be treated. And it was because of their different religions, because their religions differed so greatly on these points as to be almost opposed, that the English officer and his Burman servant failed to understand each other.

For to the Englishman punishment was a degradation. It seemed to him far more disgraceful that his servant should have been in gaol than that he should have committed theft. The theft he was ready to forgive, the punishment he could not. Punishment to him meant revenge. It is the revenge of an outraged and injured morality. The sinner had insulted the law, and therefore the law was to make him suffer. He was to be frightened into not doing it again. That is the idea. He was to be afraid of receiving punishment. And

16:Fielding Hall G-3 (1885-1890) 1898 AP1 Burma
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again his punishment was to be useful as a warning to others. Indeed, the magistrate had especially increased it with that object in view. He was to suffer that others might be saved. The idea of punishment being an atonement hardly enters into our minds at all. To us it is practically a revenge. We do not expect people to be the better for it. We are sure they are the worse. It is a deterrent for others, not a healing process for the man himself. We punish A. that B. may be afraid, and not do likewise. Our thoughts are bent on B., not really on A. at all. As far as he is concerned the process is very similar to pouring boiling lead into a wound. We do not wish or intend to improve him, but simply and purely to make him suffer. After we have dealt with him he is never fit again for human society. That was in the officer's thought when he refused to take back his Burmese servant.

Now see the boy's idea.

Punishment is an atonement, a purifying of the soul from the stain of sin. That is the only justification for, and meaning of, suffering. If a man breaks the everlasting laws of righteousness and stains his soul with the stain of sin, he must be purified, and the only method of purification is by suffering. Each sin is followed by suffering, lasting just so long as to cleanse the soul—not a moment less, or the soul would not be white; not a moment more, or it would be useless and cruel. That is the law of righteousness, the eternal inevitable sequence that leads us in the end to wisdom and peace. And as it is with the greater laws, so it should, the Buddhist thinks, be with the lesser laws.

16:Fielding Hall G-3 (1885-1890) 1898 AP1 Burma
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If a man steals, he should have such punishment and for such a time as will wean his soul from theft, as will atone for his sin. Just so much. You see, to him mercy is a falling short of what is necessary, a leaving of work half done, as if you were to leave a garment half washed. Excess of punishment is mere useless brutality. He recognizes no vicarious punishment. He cannot understand that A. should be damned in order to save B. This does not agree with his scheme of righteousness at all. It seems as futile to him as the action of washing one garment twice that another might be clean. Each man should atone for his own sin, *must* atone for his own sin, in order to be freed from it. No one can help him, or suffer for him. If I have a sore throat, it would be useless to blister you for it: that is his idea.

Consider this Burman. He had committed theft. That he admitted. He was prepared to atone for it. The magistrate was not content with that, but made him also atone for other men's sins. He was twice punished, because other men who escaped did ill. That was the first thing he could not understand. And then, when he had atoned both for his own sin and for that of others, when he came out of prison, he was looked upon as in a worse state than if he had never atoned at all. If he had never been in prison, his master would have forgiven his theft and taken him back, but now he would not. The boy was proud of having atoned in full, very full, measure for his sin; the master looked upon the punishment as inconceivably worse than the crime.

16:Fielding Hall G-3 (1885-1890) 1898 AP1 Burma
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So the officer went about and told the story of his boy coming back, and expecting to be taken on again, as a curious instance of the mysterious working of the Oriental mind, as another example of the extraordinary way Easterns argue. 'Just to think,' said the officer, 'he was not ashamed of having been in prison!' And the boy? Well, he probably said nothing, but went away and did not understand, and kept the matter to himself, for they are very dumb, these people, very long-suffering, very charitable. You may be sure that he never railed at the law, or condemned his old master for harshness.

He would wonder why he was punished because other people had sinned and escaped. He could not understand that vicariousness of punishment is a Christian idea. It would not occur to him that sending him to herd with other criminals, that cutting him off from all the gentle influences of life, from the green trees and the winds of heaven, from the society of women, from the example of noble men, from the teachings of religion, was a curious way to render him a better man. He would suppose it was intended to make him better, that he should leave gaol a better man than when he entered, and he would take the intention for the deed. Under his own king things were not any better. It is true that very few men were imprisoned, fine being the usual punishment, but still, imprisonment there was, and it was very bad of its kind. No government has been able to invent anything better. But he would not compare our government with his, but our theory of punishment with the Buddhist theory

16:Fielding Hall G-3 (1885-1890) 1898 AP1 Burma
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681 779 what he had been taught at school. As to the conduct of his master, he would be content to leave that unexplained. The Buddhist is content to leave many things unexplained until he can see the meaning. He is not fond of theories. If he does not know, he says so. 'It is beyond me,' he will say; 'I do not understand.' He has no theory of an occidental mind to explain acts of ours of which he cannot grasp the meaning; he would only not understand.

But the pity of it—think of the pity of it all! Surely there is nothing more pathetic than this: that a sinner should not understand the wherefore of his sentence, that the justice administered to him should be such as he cannot see the meaning of.

674 Certain forms of crime are very rife in Burma. The villages are so scattered, the roads so lonely, the amount of money habitually carried about so large, the people so habitually careless, the difficulty of detection so great, that robbery and kindred crimes are very common; and it is more common in the districts of the delta, long under our rule, than in the newly-annexed province in the north. Under like conditions the Burman is probably no more criminal and no less criminal than other people in the same state of civilization. Crime is a condition caused by opportunity, not by an inherent state of mind, except with the very few, the exceptional individuals; and in Upper Burma there is, now that the turmoil of the annexation is past, very little crime comparatively. There is less money there, and the village system—the control of the

16:Fielding Hall G-3 (1885-1890) 1898 AP1 Burma
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points, hardly even in minor points, does the law discriminate against women.

The law as regards marriage and inheritance and divorce will come each in its own place. It is very much the same both for the man and the woman.

The criminal law was the same for both; I have tried to find any difference, and this is all I have found: A woman's life was less valuable than a man's. The price of the body, as it is called, of a woman was less than that of a man. If a woman were accidentally killed, less compensation had to be paid than for a man. I asked a Burman about this once.

'Why is this difference?' I said. 'Why does the law discriminate?'

'It isn't the law,' he said, 'it is a fact. A woman is worth less than a man *in that way*. A maid-servant can be hired for less than a manservant, a daughter can claim less than a son. They cannot do so much work; they are not so strong. If they had been worth more, the law would have been the other way; of course they are worth less.'

And so this sole discrimination is a fact, not dogma. It is a fact, no doubt, everywhere. No one would deny it. The pecuniary value of a woman is less than that of a man. As to the soul's value, that is not a question of law, which confines itself to material affairs. But I suppose all laws have been framed out of the necessities of mankind. It was the incessant fighting during the times when our laws grew slowly into shape, the necessity of not allowing the possession of land, and the armed

21: Htin Aung E-5 (ca. 1930) 1937 AP1 Burma
Burmese AP4

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troubled in mind, because he has only a daughter to succeed him. While his daughter, the Shan princess, plays and sings and dances in her garden, the merchants with the brother pass by. The brother and the princess fall in love with each other and plight their troth in song and dance. The chieftain arrives on the scene, but fortunately for all concerned, he approves of the young man and proclaims him heir.

Meanwhile the sister in Thaton is having her adventures. A god, who had been brother to her in a previous existence, gives her an ear-ring as a token of affection. She puts it away for wearing on special occasions. The king passes by her window, falls in love, and makes her queen. That night, as the new queen awaits her husband, she sings happy songs to herself, then puts on the ear-ring, and falls asleep. She now looks like an ogress for, unknown to the well-meaning god, the ear-ring causes its wearer to have the appearance of an ogress. The king, on entering, thinks her to be an ogress who has assumed human form to bring disaster to his kingdom. So he orders her execution and commands that her foster-father himself must execute her, as he suspects the nobleman of having known all the time that his adopted daughter is an evil being. So at dawn, the girl is put into a velvet bag,[1] and the doting father is ordered by soldiers to beat her to death. He refuses, in spite of tortures, until the girl begs him to dispatch her quickly and end her agony. She dies, singing pathetic songs, while the father and even the soldiers cry. In compliance with her request before her death, the dead body is sent floating down the river on a raft. The father then engages a bricklayer to build a pagoda on the spot where she was executed. The bricklayer is a cynical old fellow, who thinks some unnecessary fuss is being made of a dead girl. He is a comic character.

The god of the forest stops the raft and lays the dead queen on the river bank. Her ghost appears before the brother, now chief of the Shan state in succession to his father-in-law. He at once leaves for Thaton attended by a minister. The god of the forest, unknown to the brother, causes him to find the body of his sister. He is grief-stricken, and guessing from the velvet bag what had happened, swears revenge on the king of Thaton. He

[1] According to established custom, Burmese royalty were put into velvet bags before execution. Also, as no blood of royal persons should be shed on the scaffold, the usual method of their execution was by drowning, burning or beating. [645] [681]

25: Ferrars E-5 (ca. 1890) 1901 APl Burma
Burmese AP4

578. THE PALACE GARDENS.

the cause of suffering and death, and the discredit reflected on officialdom by its methods, lead the best elements of the population to shun office, as a touching of pitch. The dearth of ability and character in the governing classes leaves the governed without efficient protection. The religious motive further operates in withholding information about criminals.

A pregnant category is that of the "five enemies"—Fire, Water, Robbers, Rulers, Ill-wishers. The governors and deputies who acted as judges heard causes at the *yôn*, an open shed in a public place. But every cause was presented in the first instance at the house of the official, and it is contrary to accepted ideas of politeness to approach a superior empty-handed, even on a mere visit of courtesy. The *pros* and *cons* of the case were understood before the regular hearing. At the hearing, the advocates of the parties (*ashé-ne*) publicly presented their pleas and the evidence was recorded. The Burmese form of oath is to take the *kyanza* in the hands, a book of imprecations which the witness invokes on his head if he should speak falsely. The judge or judges intimated their finding to their clerks (*sayé*), who recorded it in official style and read it out. The punishments awarded to criminals and the condition of prisoners were much like those prevailing in Europe at the time of the Renaissance. Every judgment of importance was registered in the *Hluttaw* or chancellery at the capital, presided over by the four chief ministers (*Wundyi*), through whom all royal commands to the governors of provinces issued. There was no regular system of appeals. The Hindu code of Manú served as a body of law, and statutes were decreed by the kings; but *thazan* (custom) supplied standards of a more practical and stable nature.

579. ROYAL MAID OF HONOUR (APYODAW).

178 Since those remote times, the Burmese customary law has
671 developed naturally, side by side with the growth and development of Burmese society. The Burmese have no great national code of laws gathered and authorized by a powerful king, no great charter forced from an unwilling king, no great statute passed by a national assembly fighting against tyranny, but nonetheless the Burmese customary law shows a conception of justice and a love of personal liberty in which every Burmese must take pride.

671 To the Burmese, before the partial introduction of the
643 English legal system, law meant civil law. To them, civil law was purely customary, and besides custom, there could be no other source of law. The idea of legislation by a parliament or a congress, or by executive order of the king was unfamiliar to the Burmese. In English common law, the king could do no
[685 wrong, and thus he was above the law. But with the Burmese,
694] the king himself was not exempt from the operation of the civil law, and the king was often the defendant in civil suits, usually for wrongful seizure of land. Admittedly the king was above his subjects, and he had the right to levy taxes in service or in kind, but he was also under a duty to give protection to the people. To protect the people and to preserve the peace, the king must prevent wrong-doing and punish wrong-doers, and it was for the king to proclaim which acts were wrongs from the point of view of public peace. Thus, at the beginning of each reign, the king proclaimed his list of crimes, and the punishments he would mete out to those who were found guilty of those crimes.

671 The list of crimes varied with each king, but the usual
681 crimes were offenses against the state, murder, robbery, theft, rape, and serious defamation. The usual penalties were whipping, confinement in irons, maiming, banishment, and death, with or without forfeiture to the king's treasury of the of-
[684 fender's possessions. In the eighteenth century, adultery was added to the list of crimes, with the punishment of whipping for both the woman and her paramour, and proclamation of their guilt by beat of drums and gongs. In the nineteenth

century, the punishment for abduction of women was enhanced from one of confinement in irons to that of death. Thus what the English lawyer would understand by the term "criminal law" was considered to be the personal concern of the king. Therefore, when the ruling king died, and a new king ascended the throne, all persons undergoing punishment for crimes committed under the previous king, automatically were freed. Criminal jurisdiction therefore was considered to be merely an administrative function of the crown, and it concerned the executive, and not the judicial, officers of the state. Modern European writers have ever emphasized the despotism of Burmese kings, but the Royal Edicts proclaimed at the beginning of each reign clearly showed that the Burmese king was not a blood-thirsty individual devoid of all mercy. In the Edicts, we find the king delegating the function of meting out criminal justice to three of his Chief Ministers, admonishing at the same time that they should temper justice with mercy. The king in the Edicts ordered that even in capital crimes, the punishment should be one of banishment, and the sentence of death was to be reserved for vicious criminals. Even when the sentence of death had been passed, the execution was to be postponed for at least ten days so as to enable the king to consider the case and alter the punishment to one of banishment if the facts justified such alteration.

But as in England, the king was considered to be the fountain of justice, for his was the supreme court of the land. The kingdom was divided into provinces, each under a viceroy. Each province was further divided into cities, each city under a governor. Each city or city area was subdivided into towns and each town or town area into villages, with a headman for each town and each village. The courts of the headmen of towns or villages dealt with suits of small value, and there was a right of appeal from those courts to the courts of the governors of cities. The courts of the governors exercised both original and appellate jurisdiction, and appeals from these courts lay to the court of the viceroy, which also exercised both